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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,166	07/03/2000	Michael N. Berke	P-3627-2	2851

7590

03/09/2006

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EXAMINER

AMERSON, LORI BAKER

ART UNIT PAPER NUMBER

3764

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/609,166	<b>Applicant(s)</b> BERKE, MICHAEL N.	
	<b>Examiner</b> L. Amerson	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Response to Arguments**

1. Applicant argues that claim 1 is acknowledged as in Jepson format and the improvement consists of an individual being oriented transversely of the plane of the doorway rather than in the plane of the doorway. However, the examiner contends that claim 1 is not in proper Jepson format. Where the nature of the case admits, as in the case of an improvement, any independent claim should contain in the following order:
  - (1) A preamble comprising a general description of all the elements or steps of the claimed combination which are conventional or known,
  - (2) A phrase such as "wherein the improvement comprises," and
  - (3) Those elements, steps, and/or relationships which constitute that portion of the claimed combination which the applicant considers as the new or Improved portion. In this case, the preamble of claim 1 does not meet the requirements set forth in the above statement.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- a. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The

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structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. The applicant has not included the doorstep feature which appears to be a critical element in the function of the instant invention. Additionally, see the arguments above regarding proper format for a Jepson claim. To overcome the rejection, the following claim drafted by the examiner and considered to distinguish patentably over the art of record in this application, is presented to applicant for consideration:

*Claim 1 (currently amended)*

--A self-administered back massage method practiced in a transverse plane of a doorway and applied to an individual by leaning contact against a semi-spherical configured massaging device, an improvement consisting of a method of facilitating and establishing said leaning contact between said massaging device and a selected back area of said individual while the individual begin oriented transversely to the plane of the doorway thereby increasing the massaging pressure applied at the interface of the device and the selected area of the individual, said method comprising the steps of:

a) Providing a positioning site for a back massage device, said site including a door frame having two opposite side walls bounding there between a vertical plane of a doorway opening and including a door stop, said

b) Providing a massaging device comprising a base having a front and rear surface, a plurality of semi-spherical projections extending from a front surface of said base, a vertical notch in said base rear surface consisting of a cooperating pair of side walls bounding a positioning recess there between,--

**c) no changes,**

--d) positioning an individual in said plane of said doorway,

e) establishing leaning engagement of an individual against said positioned massaging device as outlined in step (c),

f) instructing an individual to supplement said established leaning engagement by pushing against the opposite side wall of said doorway to cause linear movement of the individual in the direction of said massaging device,--

**no changes to "whereby" clause at the conclusion of the claim.**

3. Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. Note the similar devices cited on Form 892. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Lori Amerson", with a stylized, cursive script.

Lori Amerson